

## **SUBCHAPTER I : FINANCIAL ASSURANCE**

§§336.801-336.807

Effective June 5, 1997

### **§336.801. Purpose and Scope.**

This subchapter establishes requirements and mechanisms for demonstrating financial assurance. The rules in this subchapter apply to all persons licensed by the commission under this chapter.

Adopted May 14, 1997

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### **§336.802. Definitions.**

Terms used in this subchapter are defined in §§336.2, 336.502, 336.602, and 336.702 of this title (relating to Definitions), except where terms used in this subchapter have the following definitions:

Annual review - Conducted on the anniversary date of the license.

Assets - All existing and all probable future economic benefits obtained or controlled by a particular entity.

Closure - Any one or combination of the following: closure, dismantlement, decontamination, decommissioning, reclamation, disposal, restoration, stabilization, monitoring, or post-closure, excluding long-term care.

Current assets - Cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

Current cost estimate - The most recent estimates prepared in accordance with this chapter and approved by the executive director for the purpose of demonstrating financial assurance for closure and, if applicable, long-term care.

Current liabilities - Obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

Independently audited - An audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

Liabilities - Probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

Long-term care - Shall mean the same as long-term care and surveillance as used in Subchapter G of Chapter 336 of this title (relating to Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities) and the same as institutional control as used in Subchapter

H of Chapter 336 of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste).

Net working capital - Current assets minus current liabilities.

Net worth - Total assets minus total liabilities and is equivalent to owner's equity.

Parent corporation - A corporation which directly owns at least 50% of the voting stock of the corporation which is the licensee; the latter corporation is deemed a "subsidiary" of the parent corporation.

Tangible net worth - The tangible assets that remain after deducting liabilities; such assets would not include intangibles, such as goodwill and rights to patents or royalties.

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### **§336.803. Financial Assurance Requirements.**

(a) This subchapter applies to licensees with closure and, if applicable, long-term care requirements. The licensee must choose from one or more of the mechanisms as specified in §336.804 of this title (relating to Financial Assurance Mechanisms). The mechanisms available to licensees under Subchapter F of Chapter 336 of this title (relating to Licensing of Alternative Methods of Disposal of Radioactive Material) include cash deposit, certificate of deposit, deposit of government securities, trust fund, surety bond, letter of credit, insurance, financial test and corporate guarantee, or external sinking fund. The mechanisms available to licensees under Subchapter G of Chapter 336 of this title (relating to Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities) include cash deposit, certificate of deposit, deposit of government securities, trust fund, surety bond, letter of credit, financial test and corporate guarantee, or external sinking fund. The mechanisms available to licensees under Subchapter H of Chapter 336 of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste) include cash deposit, certificate of deposit, deposit of government securities, trust fund, surety bond, letter of credit, or external sinking fund.

(1) A licensee required to provide evidence of financial assurance must establish financial assurance based on the cost estimate approved by the executive director. For new applications, the financial assurance must be submitted 60 days prior to commencement of operation, except that new applicants under Subchapter F of Chapter 336 of this title must comply with §336.514 of this title (relating to Financial Assurance and Recordkeeping for Decommissioning). Existing licensees must comply with the regulations within 30 days of the effective date of these rules, except that existing licensees under Subchapter F of Chapter 336 of this title must comply with §336.514 of this title.

(2) A licensee who uses either a surety bond guaranteeing payment or performance, or a letter of credit must establish a standby trust, as specified under §336.804(a) of this title. Under the terms of the mechanism, all payments made thereunder will be deposited by the issuer directly into the standby trust fund in accordance with instructions from the executive director. This standby trust fund shall meet the wording specified under §336.806(a) of this title (relating to Wording of Financial Assurance Instruments) except that:

(A) An originally-signed duplicate of the trust agreement shall be submitted to the executive director with the surety bond or letter of credit; and

(B) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

- (i) payments into the trust fund as specified in this section;
- (ii) updating of Schedule A of the trust agreement to show current cost estimates;
- (iii) annual valuations as required by the trust agreement; and
- (iv) notices of nonpayment as required by the trust agreement.

(3) The mechanism submitted for compliance with this chapter must be worded exactly as specified in §336.806 of this title. The executive director will determine the acceptability of the mechanism(s).

(4) The current cost estimate is subject to annual review by the executive director in accordance with §336.627 of this title (relating to Financial Assurance Requirements) and §336.736 of this title (relating to Funding for Disposal Site Closure and Stabilization). Whenever the required financial assurance amount increases to an amount greater than the amount being provided in the financial assurance mechanism, the licensee must either cause the amount of the mechanism to be increased or obtain additional financial assurance to cover the increase. The licensee shall submit evidence of such increase to the executive director.

(5) The licensee may request an annual reduction in financial assurance if the remaining financial assurance amount is sufficient to cover the cost of closing the facility or site. Within 60 days after receiving a request for a financial assurance reduction, the executive director will either allow the amount to be reduced or respond in writing as to why financial assurance cannot be reduced.

(6) Multiple financial assurance mechanisms may be used to satisfy the requirements of this subchapter. The mechanisms are limited to trust funds, surety bond guaranteeing payment, letters of credit, insurance and external sinking fund. The mechanisms shall be as specified in §336.804 of this title, except that it is the combination of mechanisms, rather than the single mechanism, which shall provide financial assurance for an amount at least equal to the amount required to satisfy the current cost estimate. The executive director may allow any or all of the mechanisms to be used for closure.

(7) A financial assurance mechanism for multiple licenses may be used to satisfy the requirements of this subchapter. Evidence of financial assurance submitted to the executive director must include a list showing, for each facility or site, the license number, name, address, and the amount of the current cost estimate for closure and, where applicable, for long-term care. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each licensed facility or site. In directing funds available

through the mechanism for closure, or, where applicable long-term care, the executive director may direct only the amount of funds designated for that facility or site.

(8) For Subchapters G and H of Chapter 336 of this title, the executive director may accept financial assurance established to meet requirements of other federal or state agencies and/or local governing bodies for closure, and if applicable long-term care, provided such mechanism complies with the requirements of this subchapter and the full amount of financial assurance required for the specific license is clearly identified and committed for use for the purposes of Subchapters G and H of Chapter 336 of this title.

(9) The executive director will provide written consent to termination of the financial assurance mechanism when:

(A) A licensee substitutes and receives approval for alternate financial assurance as specified in this subchapter; or

(B) The commission terminates the license; or

(C) The commission transfers the license to the appropriate government agency in accordance with the requirements of this chapter.

(10) Following a determination that the licensee has failed to perform closure in accordance with the license and rules, the executive director may draw on the financial assurance to complete these activities on behalf of the licensee.

(11) Proof of forfeiture must not be necessary to collect the financial assurance, so that in the event that the licensee could not provide an acceptable replacement financial assurance within the required time, the financial assurance mechanism shall be automatically collected prior to its expiration.

(12) Continuous financial assurance coverage shall be provided until all the requirements of this chapter have been completed.

(13) Incapacity of licensees, guarantors, or financial institutions.

(A) A licensee must notify the executive director by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code, naming the licensee as debtor, within 10 business days after the commencement of the proceeding. A guarantor of a corporate guarantee as specified in §336.804(f) and (g) of this title (relating to Financial Assurance Mechanisms) shall make such a notification if it is named as debtor, as required under the terms of the guarantee.

(B) A licensee who fulfills the requirements of this section or §336.804 of this title by obtaining a letter of credit, surety bond, or insurance policy will be deemed to be without the required financial assurance coverage in the event of bankruptcy, insolvency, or a suspension or revocation of the license or charter of the issuing institution. The licensee must establish other acceptable financial assurance within 30 days after such an event.

(b) A licensee under Subchapters G or H of Chapter 336 of this title must adjust the current cost estimate for inflation at least 60 days before the anniversary date of the license. The adjustment must be made as specified in paragraphs (1) and (2) of this subsection, using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the United States Department of Commerce in its *Survey of Current Business*. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the cost estimate by the inflation factor. The result is the adjusted cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted cost estimate by the latest inflation factor.

(c) A licensee under Subchapter G of Chapter 336 of this title may not use self-insurance, or any arrangement which essentially constitutes self insurance (e.g., a contract with a state or federal agency) will not satisfy the financial assurance requirement as specified in this subchapter since this provides no additional assurance other than that which already exists through license requirements.

(d) On a case-by-case basis, the executive director may approve other alternative financial assurance mechanisms.

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**§336.804. Financial Assurance Mechanisms.**

(a) Trust fund or standby trust fund.

(1) A licensee may satisfy the requirements of financial assurance by establishing a trust fund which conforms to paragraphs (2) - (8) of this subsection in addition to the requirements specified in §336.803 of this title (relating to Financial Assurance Requirements).

(2) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(3) The wording of the trust agreement must be identical to the wording specified in §336.806(a) of this title (relating to Wording of Financial Assurance Mechanisms), and the trust agreement must be accompanied by a formal certificate of acknowledgment. Schedule A of the trust agreement must be updated within 60 days after an approved change in the amount of the current cost estimate covered by the agreement.

(4) The initial payment into the trust fund must be at least equal to the current cost estimate, except when a combination of mechanisms are used in accordance with §336.803(a)(6) of this title. A receipt from the trustee for the initial payment must be submitted by the licensee to the executive director with the original signed duplicate of the trust agreement.

(5) If the value of the trust fund is greater than the total amount of the current cost estimate, the licensee may submit a written request to the executive director for release of the amount in excess.

(6) If a licensee substitutes other financial assurance as specified in this section for all or part of the trust fund, he may submit a written request to the executive director for approval of the release of the amount in excess of the current cost estimate covered by the trust fund.

(7) Within 60 days after receiving a request from the licensee for release of funds as specified in paragraph (5) or (6) of this subsection, the executive director may instruct the trustee to release to the licensee such funds as the executive director specifies in writing.

(8) After beginning final closure, a licensee or any other person authorized by the executive director to perform closure may request reimbursement for expenditures by submitting itemized bills to the executive director. After receiving bills for closure activities, the executive director will determine whether the expenditures are in accordance with the closure requirements and within 60 days following a final review, will instruct the trustee to make reimbursement in such amounts as the executive director specifies in writing. If the executive director has reason to believe that the cost of closure will be significantly greater than the value of the trust fund, the executive director may withhold reimbursement of such amounts as deemed prudent until it is determined that the licensee is no longer required to maintain financial assurance.

(b) Surety bond guaranteeing payment.

(1) A licensee may satisfy the requirements of financial assurance by establishing a surety bond which conforms to paragraphs (2) - (8) of this subsection in addition to the requirements specified in §336.803 of this title.

(2) The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the United States Department of the Treasury, and licensed in the State of Texas.

(3) The wording of the surety bond must be identical to the wording specified in §336.806(b) of this title.

(4) The licensee who uses a surety bond to satisfy financial assurance requirements of this section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the executive director. This standby trust fund must meet the requirements specified in subsection (a) of this section, except that:

(A) An originally-signed duplicate of the trust agreement must be submitted to the executive director with the surety bond; and

(B) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

(i) payments into the trust fund as specified in subsection (a) of this section;

(ii) updating of Schedule A of the trust agreement to show current cost estimates;

(iii) annual valuations as required by the trust agreement; and

(iv) notices of nonpayment as required by the trust agreement.

(5) The bond must guarantee that the licensee will:

(A) fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure activities; or

(B) fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin final closure issued by the executive director becomes final, or within 15 days after an order to begin final closure is issued by a United States district court or other court of competent jurisdiction; or

(C) provide alternate financial assurance as specified in this subchapter, and obtain the executive director's written approval of the assurance provided, within 30 days after receipt by both the licensee and the executive director of a notice of cancellation of the bond from the surety.

(6) Under the terms of the bond, the surety will become liable on the bond obligation when the licensee fails to perform as guaranteed by the bond.

(7) The penal sum of the bond must be in an amount at least equal to the current cost estimate, except as provided in §336.803(a)(6) of this title.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the licensee and to the executive director. Cancellation may not occur, however, during the 90 days beginning on the date of the receipt of the notice of cancellation by both the licensee and the executive director, as evidenced by the return receipts. If the licensee fails to provide alternate financial assurance within 30 days of the receipt of notice of cancellation, the surety will be required to perform under the terms of the bond.

(c) Surety bond guaranteeing performance.

(1) A licensee may satisfy the requirements of financial assurance by establishing a surety bond which conforms to paragraphs (2)-(9) of this subsection in addition to the requirements specified in §336.803 of this title.

(2) The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the United States Department of the Treasury, and licensed in the State of Texas.

(3) The wording of the surety bond must be identical to the wording specified in §336.806(c) of this title.

(4) The licensee who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the executive director. This standby trust must meet the requirements specified in subsection (a) of this section, except that:

(A) An originally signed duplicate of the trust agreement must be submitted to the executive director with the surety bond; and

(B) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

(i) payments into the trust fund as specified in subsection (a) of this section;

(ii) updating of Schedule A of the trust agreement to show current cost estimates;

(iii) annual valuations as required by the trust agreement; and

(iv) notices of nonpayment as required by the trust agreement.

(5) The bond must guarantee that the licensee will:

(A) perform final closure in accordance with the requirements of the license whenever required to do so; or

(B) provide alternate financial assurance as specified in this subchapter, and obtain the executive director's written approval of the assurance provided, within 30 days after receipt by both the licensee and the executive director of a notice of cancellation of the bond from the surety.

(6) Under the terms of the bond, the surety will become liable on the bond obligation when the licensee fails to perform as guaranteed by the bond. Following a determination that the licensee has failed to perform final closure in accordance with the license, under the terms of the bond the surety will perform such final closure as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.

(7) The penal sum of the bond must be in an amount at least equal to the current cost estimate, except as provided in §336.803(a)(6) of this title.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the licensee and to the executive director. Cancellation may not occur, however, during the 90 days beginning on the date of the receipt of the notice of cancellation by both the licensee and the executive director, as evidenced by the return receipts. If the licensee fails to provide



alternate financial assurance within 30 days of the receipt of notice of cancellation, the surety will be required to perform under the terms of the bond.

(9) The surety will not be liable for deficiencies in the performance of closure by the licensee after the executive director releases the licensee from the requirements of this subchapter in accordance with §336.803(a)(9) of this title.

(d) Letter of credit.

(1) A licensee may satisfy the requirements of financial assurance by obtaining a letter of credit which conforms to paragraphs (2) - (9) of this subsection in addition to the requirements specified in §336.803 of this title.

(2) The issuing institution must be an entity which has the authority to issue letters of credit and whose operations are regulated and examined by a federal or state agency.

(3) The wording of the letter of credit must be identical to the wording specified in §336.806(d) of this title.

(4) The licensee who uses a letter of credit to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the executive director will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the executive director. This standby trust fund must meet the requirements of the trust fund specified in subsection (a) of this section, except that:

(A) An originally signed duplicate of the trust agreement must be submitted to the executive director with the letter of credit; and

(B) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

(i) payments into the trust fund as specified in subsection (a) of this section;

(ii) updating of Schedule A of the trust agreement to show current cost estimates;

(iii) annual valuations as required by the trust agreement; and

(iv) notices of nonpayment as required by the trust agreement.

(5) The letter of credit must be accompanied by a letter from the licensee referring to the letter of credit by number, issuing institution and date, and providing the following information:

(A) the license number;

(B) name and address of the facility or site; and

(C) the amount of funds assured for closure by the letter of credit.

(6) The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 90 days before the current expiration date, the issuing institution notifies both the licensee and the executive director by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 90 days will begin on the date when both the licensee and the executive director have received the notice, as evidenced by the return receipts.

(7) If the licensee does not establish alternate financial assurance as specified in this subchapter and obtain written approval of such alternate financial assurance from the executive director within 30 days after receipt by both the licensee and the executive director of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the executive director will draw on the letter of credit. The executive director may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 60 days of an extension, the executive director will draw on the letter of credit if the licensee has failed to provide alternate financial assurance as specified in this subchapter and to obtain written approval of such assurance from the executive director.

(8) The letter of credit must be issued in an amount at least equal to the current cost estimate, except as provided in §336.803(a)(6) of this title.

(9) The executive director will return the letter of credit to the issuing institution for termination, in accordance with §336.803(a)(9) of this title.

(e) Insurance.

(1) A licensee may satisfy the requirements of financial assurance by obtaining insurance which conforms to paragraphs (2) - (8) of this subsection in addition to the requirements specified in §336.803 of this title, and submitting a certificate of such insurance to the executive director.

(2) At a minimum, the insurer must be licensed to transact the business of insurance or eligible to provide insurance as an excess, or surplus lines insurer, in Texas.

(3) The wording of the certificate of insurance must be identical to the wording specified in §336.806(e) of this title.

(4) The insurance policy must be issued for a face amount at least equal to the current financial assurance cost estimate, except as provided in §336.803(a)(6) of this title. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(5) The insurance policy must guarantee that funds will be available whenever closure occurs. The policy shall also guarantee that once final closure begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the executive director, to such party or parties as the executive director specifies.

(6) The licensee must maintain the policy in full force and effect until the executive director consents to termination of the policy by the licensee as specified in §336.803(a)(9) of this title. Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, will constitute a significant violation of these regulations, warranting such remedy as the executive director deems necessary. Such violation will be deemed to begin upon receipt by the executive director of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(7) Each policy must contain a provision allowing assignment of the policy to a successor licensee. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(8) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the licensee and the executive director. Cancellation, termination, or failure to renew may not occur, however, during the 90 days beginning with the date of receipt of the notice by both the executive director and the licensee, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

(A) The executive director deems the facility or site abandoned; or

(B) The license is terminated, or revoked or a new license is denied; or

(C) Closure is ordered by the executive director or a United States district court or other court of competent jurisdiction; or

(D) The licensee is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code; or

(E) The premium due is paid.

(f) Financial test and corporate guarantee for Subchapter F of Chapter 336 of this title (relating to Licensing of Alternative Methods of Disposal of Radioactive Material).

(1) A licensee or parent company of a licensee under Subchapter F of Chapter 336 of this title may satisfy the requirements of financial assurance by demonstrating that it passes a financial test as specified in this subsection, in addition to the requirements specified in §336.803 of this title. To pass the

test, the parent company must meet the criteria of either paragraph (2) or (3) of this subsection. The licensee must meet the criteria of paragraph (4) of this subsection.

(2) The parent company must have:

(A) two of the following three ratios:

(i) a ratio of total liabilities to net worth less than 2.0;

(ii) a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and

(iii) a ratio of current assets to current liabilities greater than 1.5; and

(B) net working capital and tangible net worth each at least six times the current cost estimate (or prescribed amount if a certification is used); and

(C) tangible net worth of at least \$10 million; and

(D) assets located in the United States amounting to at least 90% of total assets or at least six times the current cost estimates (or prescribed amount if a certification is used).

(3) The parent company must have:

(A) a current rating for its most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

(B) tangible net worth at least six times the sum of the current cost estimates (or prescribed amount if a certification is used); and

(C) tangible net worth of at least \$10 million; and

(D) assets located in United States amounting to at least 90% of total assets or at least six times the current cost estimates (or prescribed amount if a certification is used).

(4) The licensee must have:

(A) tangible net worth at least 10 times the total current cost estimate (or the current amount required if certification is used) for all closure activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor;

(B) assets located in the United States amounting to at least 90% of total assets or at least 10 times the total current cost estimate (or the current amount required if certification issued) for all closure activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor;

(C) a current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poor's, or Aaa, Aa, A as issued by Moody's;

(D) at least one class of equity securities registered under the Security Exchange Act of 1934; and

(E) a written guarantee (a written commitment by a corporate officer) which states that the licensee will fund and carry out the required closure activities, or upon issuance of an order by the executive director, the licensee will set up and fund a trust in the amount of the current cost estimates.

(5) To demonstrate that it meets the test, the licensee or parent company must submit the following items to the executive director:

(A) a letter signed by the parent company's or licensee's chief financial officer and worded identical to the wording specified in §336.806(f)(1) or (2), respectively, of this title; and

(B) a copy of the independent certified public accountant's report on examination of its financial statements for the latest completed fiscal year; and

(C) a special report from its independent certified public accountant stating that:

(i) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(ii) In connection with that procedure, he found such amounts to be in agreement.

(6) After the initial submission of items specified in paragraph (5) of this subsection, the licensee or parent company must send updated information to the executive director within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in paragraph (5) of this subsection.

(7) If the licensee or the parent company no longer meets the requirements of paragraph (2), (3) or (4) of this subsection, it must send notice to the executive director of intent to establish alternate financial assurance as specified in this subsection. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the licensee or parent company no longer meets the requirements. The licensee shall provide alternate financial assurance within 120 days after the end of such fiscal year.

(8) The executive director may, based on a reasonable belief that the licensee or parent company no longer meets the requirements of paragraph (2), (3) or (4) of this subsection, require reports of financial condition at any time from the licensee or parent company in addition to those specified in paragraph (5) of this subsection. If the executive director finds, on the basis of such reports or other information, that the licensee or parent company no longer meets the requirements of paragraph (2), (3) or (4)

of this subsection, the licensee must provide alternate financial assurance as specified in this subchapter within 30 days after notification of such a finding.

(9) The executive director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the licensee's or parent company's financial statements. An adverse opinion or disclaimer of opinion will be cause for disallowance. The executive director will evaluate other qualifications on an individual basis. The licensee shall provide alternate financial assurance as specified in this subchapter within 30 days after notification of the disallowance.

(10) The licensee may meet the requirements of this section by obtaining a written guarantee, hereafter referred to as "corporate guarantee," from its parent company, hereafter referred to as "guarantor." The guarantor must meet the requirements in paragraphs (1) - (12) of this subsection and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified in §336.806(g) of this title. The corporate guarantee must accompany the items sent to the executive director as specified in paragraph (5) of this subsection. The terms of the corporate guarantee must provide that:

(A) If the licensee fails to perform final closure of the facility or site covered by the corporate guarantee in accordance with the license, the guarantor will do so or establish a trust fund as specified in subsection (a) of this section in the name of the licensee.

(B) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and to the executive director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the licensee and the executive director, as evidenced by the return receipts.

(C) If the licensee fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the executive director within 90 days after receipt by both the licensee and the executive director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the licensee.

(11) Two officers of the licensee and two officers of the guarantor who are authorized to bind the respective entity should sign the corporate guarantee. A copy of such authorization for each persons signing should be attached to the corporate guarantee. The corporate seal should be affixed.

(12) The guarantor should certify and demonstrate that it has full authority under the laws of the state of its incorporation, its articles of incorporation and bylaws to enter into this corporate guarantee; and, that the guarantor has full approval from its board of directors to enter into this guarantee.

(g) Financial test and corporate guarantee for Subchapter G of Chapter 336 of this title (relating to Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities).

(1) A parent company of a licensee under Subchapter G of Chapter 336 of this title may satisfy the requirements of financial assurance by demonstrating that it passes a financial test as specified in

this subsection, in addition to the requirements specified in §336.803 of this title. To pass the test the parent company must meet the criteria of either paragraph (2) or (3) of this subsection.

(2) The parent company must have:

(A) two of the following three ratios:

(i) a ratio of total liabilities to net worth less than 2.0;

(ii) a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and

(iii) a ratio of current assets to current liabilities greater than 1.5; and

(B) net working capital and tangible net worth each at least six times the current cost estimate; and

(C) tangible net worth of at least \$20 million; and

(D) assets located in the United States amounting to at least 90% of total assets or at least six times the current cost estimates.

(3) The parent company must have:

(A) a current rating for its most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

(B) tangible net worth at least six times the sum of the current cost estimates; and

(C) tangible net worth of at least \$20 million; and

(D) assets located in the United States amounting to at least 90% of total assets or at least six times the current cost estimates.

(4) To demonstrate that it meets the test, the parent company must submit the following items to the executive director:

(A) a letter signed by the parent company's chief financial officer and worded identical to the wording specified in §336.806(h) of this title; and

(B) a copy of the independent certified public accountant's report on examination of its financial statements for the latest completed fiscal year; and

(C) a special report from its independent certified public accountant stating that:

(i) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(ii) In connection with that procedure, he found such amounts to be in agreement.

(5) After the initial submission of items specified in paragraph (4) of this subsection, the licensee or parent company must send updated information to the executive director within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in paragraph (4) of this subsection.

(6) If the parent company no longer meets the requirements of paragraph (2) or (3) of this subsection, he must send notice to the executive director of intent to establish alternate financial assurance as specified in this section. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the parent company no longer meets the requirements. The licensee shall provide the alternate financial assurance within 120 days after the end of such fiscal year.

(7) The executive director may, based on a reasonable belief that the parent company may no longer meet the requirements of paragraph (2) or (3) of this subsection, require reports of financial condition at any time from the parent company in addition to those specified in paragraph (4) of this subsection. If the executive director finds, on the basis of such reports or other information, that the parent company no longer meets the requirements of paragraph (2) or (3) of this subsection, the licensee must provide alternate financial assurance as specified in this subchapter within 30 days after notification of such a finding.

(8) The executive director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the parent company's financial statements. An adverse opinion or disclaimer of opinion will be cause for disallowance. The executive director will evaluate other qualifications on an individual basis. The licensee shall provide alternate financial assurance as specified in this subchapter within 30 days after notification of the disallowance.

(9) The licensee must obtain a written guarantee, hereafter referred to as "corporate guarantee," from its parent company, hereafter referred to as "guarantor." The guarantor must meet the requirements in paragraphs (1)-(11) of this subsection and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified in §336.806(i) of this title. The corporate guarantee must accompany the items sent to the executive director as specified in paragraph (4) of this subsection. The terms of the corporate guarantee must provide that:

(A) If the licensee fails to perform final closure of the facility or site covered by the corporate guarantee in accordance with the license, the guarantor will do so or establish a trust fund as specified in subsection (a) of this section in the name of the licensee.

(B) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and to the executive director. Cancellation may not occur,



however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the licensee and the executive director, as evidenced by the return receipts.

(C) If the licensee fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the executive director within 90 days after receipt by both the licensee and the executive director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the licensee.

(10) Two officers of the licensee and two officers of the guarantor who are authorized to bind the respective entity should sign the corporate guarantee. A copy of such authorization for each persons signing should be attached to the corporate guarantee. The corporate seal should be affixed.

(11) The guarantor should certify and demonstrate that it has full authority under the laws of the state of its incorporation, its articles of incorporation and bylaws to enter into this corporate guarantee; and, that the guarantor has full approval from its board of directors to enter into this guarantee.

(h) External sinking fund.

(1) The licensee may satisfy the requirements of financial assurance by establishing an external sinking fund.

(2) An external sinking fund is an account segregated from the licensee's assets and outside the licensee's administrative control.

(3) An external sinking fund, such as a trust, is combined with a financial assurance mechanism as specified in subsections (b) - (e) of this section.

(4) The external sinking fund is established and maintained by setting aside funds periodically. Deposits are made at least annually.

(5) The value of the external sinking fund and the combined financial assurance mechanism, is equal to the current cost estimate.

(6) As the value of the sinking fund increases, the value of the combined financial assurance mechanism decreases. When the external sinking fund is equal to the current cost estimate, the combined financial assurance mechanism will no longer be required to be maintained.

Adopted May 14, 1997

Effective June 5, 1997

### **§336.805. Long-Term Care Requirements.**

The long-term care requirements of this chapter shall apply to those licensees as specified under Subchapters G and H of Chapter 336 of this title (relating to Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities, and Licensing for Near-Surface Land Disposal of

Radioactive Waste) whose ownership of the site is subject to being transferred to the state or federal government.

Adopted May 14, 1997

Effective June 5, 1997

**§336.806. Wording of Financial Assurance Mechanisms.**

(a) A trust agreement for a trust or standby trust, as specified in §336.804(a) of this title (relating to Financial Assurance Mechanisms), must be worded as specified in §336.807(a)(1), Appendix A, of this title (relating to Wording of Financial Assurance Instruments), except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.

(b) A surety bond guaranteeing payment, as specified in §336.804(b) of this title, must be worded as specified in §336.807(b), Appendix A of this title, except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.

(c) A surety bond guaranteeing performance, as specified in §336.804(c) of this title, must be worded as specified in §336.807(c), Appendix A of this title, except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.

(d) A letter of credit, as specified in §336.804(d) of this title, must be worded as specified in §336.807(d), Appendix A of this title, except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.

(e) A certificate of insurance, as specified in §336.804(e) of this title, must be worded as specified in §336.807(e), Appendix A of this title, except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.

(f) A letter from a chief financial officer must be worded as specified.

(1) A letter from the chief financial officer for the parent company, as specified in §336.804(f) of this title, must be worded as specified in §336.807(f)(1), except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.

(2) A letter from the chief financial officer for the licensee, as specified in §336.804(f) of this title, must be worded as specified in §336.807(f)(2), Appendix A of this title, except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.

(g) A corporate guarantee, as specified in §336.804(f) of this title, must be worded as specified in §336.807(g), Appendix A of this title, except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.

(h) A letter from the chief financial officer for the parent company, as specified in §336.804(g) of this title, must be worded as specified in §336.807(h), Appendix A of this title, except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.

(i) A corporate guarantee, as specified in §336.804(g) of this title, must be worded as specified in §336.807(i), Appendix A of this title, except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.

Adopted May 14, 1997

Effective June 5, 1997

**§336.807. Appendix A. Wording of Financial Assurance Instruments.**

(a) Trusts.

(1) Trust agreement.

**TRUST AGREEMENT**  
(For Trust or Standby Trust)

TRUST AGREEMENT, the "Agreement," entered into as of (date) by and between (name of the licensee), a (name of State) (insert "corporation," "partnership," "association," or "proprietorship"), the "Grantor," and (name of corporate trustee), (insert "incorporated in the State of \_\_\_\_\_" or "a national bank"), the "Trustee."

WHEREAS, the Texas Natural Resource Conservation Commission, "TNRCC," an agency of the State of Texas, has established certain regulations, pursuant to Chapter 401 of the Texas Health and Safety Code, applicable to the Grantor, requiring that a licensee of a (insert facility or site type) shall provide assurance that funds will be available when needed in accordance with the approved Closure Plan and, if applicable, for any long-term care of the (insert facility or site type),

WHEREAS, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee,

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the licensee who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of (insert of facilities or sites) and Cost Estimates. This Agreement pertains to the facilities and/or sites and TNRCC approved cost estimates identified in license number (insert license number) and shown in Schedule A. (On Schedule A, for each facility or site, list the license number, name, address, and the current cost estimates for closure, and/or, if applicable, long-term care or portions thereof, for which financial assurance is demonstrated by this Agreement).

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of TNRCC. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided.

Section 4. Payments Comprising the Fund. Payments made to the Trustee for the fund shall consist of cash or securities acceptable to the Trustee. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The

Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount of adequacy of the Fund, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by TNRCC.

Section 5. Payment for Closure and Long-Term Care. The Trustee shall make payments from the Fund as the TNRCC Executive Director shall direct, in writing, to provide for the payment of the costs of closure and, if applicable, long-term care of the (insert facilities or sites) covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the TNRCC Executive Director from the Fund for closure expenditures in such amounts as the TNRCC Executive Director shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the TNRCC Executive Director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the Fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the (insert facilities or sites), or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities

may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the TNRCC Executive Director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the TNRCC Executive Director shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the TNRCC Executive Director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the TNRCC Executive Director to the Trustee shall be in writing, signed by the TNRCC Executive Director, or his designee(s), and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or TNRCC hereunder has occurred. The Trustee shall have no

duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the TNRCC, except as provided for herein.

Section 15. Notice of Nonpayments. The Trustee shall notify in writing the Grantor and the TNRCC Executive Director, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the TNRCC Executive Director, or by the Trustee and the TNRCC Executive Director, if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the TNRCC Executive Director, or by the Trustee and the TNRCC Executive Director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the TNRCC Executive Director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Texas.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 30 Texas Administrative Code §336.807(a)(1) as such regulations were constituted on the date first above written.

(Signature of Grantor)

By (Title)

Attest:

(Title)

(Seal)

(Signature of Trustee)

By (Title)

Attest:

(Title)

(Seal)

(2) Certification of acknowledgement. The following is an example of the certification of acknowledgment that must accompany the trust agreement. Figure 2: 30 TAC §336.807(a)(2)

Certification of Acknowledgement

State of \_\_\_\_\_  
County of \_\_\_\_\_

On this (date), before me personally came (name of licensee) to me known, who, being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(signature of Notary Public)

My Commission Expires:

\_\_\_\_\_

(b) Financial guarantee bond.

### FINANCIAL GUARANTEE BOND

Date bond executed: \_\_\_\_\_

Effective date: \_\_\_\_\_

Principal: (legal name and business address of licensee).

Type of organization: (insert "individual," "joint venture," "partnership," or "corporation").

State of incorporation: \_\_\_\_\_

Surety(ies): (name(s) and business address(es)).

TNRCC License Number, name, address, and closure activities and, if applicable, long-term care amount(s) for each (insert facility or site) guaranteed by this bond: \_\_\_\_\_

Total penal sum of bond: \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Texas Natural Resource Conservation Commission, hereinafter called TNRCC, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, the TNRCC, an agency of the State of Texas, has promulgated regulations in 30 Texas Administrative Code Chapter 336. These regulations, applicable to the Principal, require that a (insert facility or site type) licensee shall provide assurance that funds will be available when needed in accordance with the approved Closure Plan and, if applicable, for the long-term care of the (insert facility or site type).

WHEREAS, said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance.

NOW, THEREFORE, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of closure activities and, if applicable, long-term care of each (insert facility or site) identified above, fund the standby trust fund in the amount(s) identified above for the (insert facility or site),

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after an order to begin closure activities and, if applicable, long-term care is issued by the TNRCC Executive Director or a United States District Court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, as specified in Subchapter I of 30 Texas Administrative Code Chapter 336, as applicable, and obtain the TNRCC Executive Director's written approval of such assurance, within 30 days after the date of notice of cancellation is received by both the Principal and the TNRCC Executive Director from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the TNRCC Executive Director that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the (insert facility(ies) or site(s)) into the standby trust funds as directed by the TNRCC Executive Director.



The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the TNRCC Executive Director, provided, however, that cancellation shall not occur during the 90 days beginning on the date of receipt of the notice of cancellation by both the Principal and the TNRCC Executive Director, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the TNRCC Executive Director in which the bonded (insert facility(ies) or site(s)) is (are) located.

**(The following paragraph is an optional rider that may be included but is not required.)**

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new current cost estimate, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the TNRCC Executive Director.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 30 Texas Administrative Code §336.807(b) as such regulations were constituted on the date this bond was executed.

Principal

(Signature(s))  
(Name(s))  
(Title(s))  
(Corporate seal)

Corporate Surety(ies)

(Name and address)  
State of incorporation: \_\_\_\_\_.  
Liability limit: \$\_\_\_\_\_.

(Signature(s))  
(Name(s) and title(s))  
(Corporate seal)

(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)

Bond premium: \$\_\_\_\_\_.

(c) Performance guarantee bond.

PERFORMANCE GUARANTEE BOND

Date bond executed: \_\_\_\_\_.

Effective date: \_\_\_\_\_.

Principal: (legal name and business address of licensee).

Type of organization: (insert "individual," "joint venture," "partnership," or "corporation").

State of incorporation: \_\_\_\_\_.

Surety(ies): (name(s) and business address(es))

\_\_\_\_\_  
TNRCC License Number, name, address, and closure and, if applicable, long-term care cost amount(s) for each (insert facility or site) guaranteed by this bond: \_\_\_\_\_

Total penal sum of bond: \$ \_\_\_\_\_.

Surety's bond number: \_\_\_\_\_.

Know All Persons By These Presents, That We, the Principal and Surety(ies) hereto are firmly bound to the Texas Natural Resource Conservation Commission, hereinafter called TNRCC, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, the TNRCC, an agency of the State of Texas, has promulgated regulations in 30 Texas Administrative Code (TAC) Chapter 336. These regulations, applicable to the Principal, require that a licensee of a (insert facility or site type) shall provide assurance that funds will be available when needed in accordance with the approved Closure Plan and, if applicable, for the long term care of the (insert facility or site type).

Whereas, said Principal is required under these regulations, to have a license in order to own or operate each (insert facility or site) identified above, and

Whereas said Principal is required to provide financial assurance for closure activities and, if applicable, long-term care as a condition of the license, and

Whereas, said Principal shall establish a standby trust fund as required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully perform closure activities and, if applicable, long-term care to an approved regulatory authority, whenever required to do so, of each (insert facility or site) for which this bond guarantees closure activities and, if applicable, make arrangements to transfer funds for long-term care in accordance with license conditions, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate financial assurance as specified in Subchapter I of 30 TAC Chapter 336, and obtain the TNRCC Executive Director's written approval of such assurance, within 30 days after the date of notice of cancellation is received by both the Principal and the TNRCC Executive Director from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the TNRCC Executive Director that the Principal has been found in violation of the license conditions of 30 TAC Chapter 336, for a (insert facility or site) for which this bond guarantees performance of closure activities and, if applicable, long-term care, the Surety(ies) shall either perform in accordance with license requirements and the regulations, or place the amount guaranteed for the (insert facility or site) into the standby trust fund as directed by the TNRCC Executive Director.

Upon notification by the TNRCC Executive Director that the Principal has failed to provide alternate financial assurance as specified in Subchapter I of 30 TAC Chapter 336, and obtain written approval of such assurance from the TNRCC Executive Director during the 30 days following receipt by both the Principal and the TNRCC Executive Director of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the (insert facility or site) into the standby trust fund as directed by the TNRCC Executive Director.

The Surety(ies) hereby waive(s) notification of amendments to closure plans, license, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the licensee and to the TNRCC Executive Director, provided, however, that cancellation shall not occur during the 90 days beginning on the date of receipt of the notice of cancellation by both the Principal and the TNRCC Executive Director, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the TNRCC Executive Director.

**(The following paragraph is an optional rider that may be included but is not required.)**

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new current cost estimate, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the TNRCC Executive Director.

In Witness Whereof, the Principal and Surety(ies) have executed this Performance Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 30 Texas Administrative Code §336.807(c) as such regulations were constituted on the date this bond was executed.

Principal

(Signature(s))

(Name(s))

(Title(s)).

(Corporate seal)

Corporate Surety(ies)

(Name and address)

State of incorporation: \_\_\_\_\_

Liability limit: \$\_\_\_\_\_.

(Signature(s))

(Name(s) and title(s))

Corporate seal:

(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)

Bond premium: \$\_\_\_\_\_.

(d) Irrevocable standby letter of credit.

IRREVOCABLE STANDBY LETTER OF CREDIT

Issued to: Executive Director, Texas Natural Resource Conservation Commission

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ in your favor, at the request and for the account of (licensee's name and address) up to the aggregate amount of (in words) U.S. dollars \$\_\_\_\_\_, available upon presentation of

(1) Your sight draft, bearing reference to this letter of credit No. \_\_\_\_\_, and

(2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to Chapter 336 of 30 Texas Administrative Code issued under authority of Chapter 401 of the Texas Health and Safety Code."

This letter of credit is issued in accordance with regulations issued under authority of Chapter 401 of the Texas Health and Safety Code. TNRCC has promulgated regulations in Chapter 336 of 30 Texas Administrative Code. These regulations require that the licensee shall provide assurance that funds will be available when needed in accordance with the approved Closure Plan and, if applicable, for any long-term care of the (insert facility or site).

This letter of credit is effective as of (date) and shall expire on (date at least 1 year later), but such expiration date shall be automatically extended for a period of (at least 1 year) on (date) and on each successive expiration date, unless, at least 90 days before the current expiration date, we notify in writing both you and (licensee's name) by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 90 days after the date of receipt by both you and (licensee's name), as shown on the signed return receipts. If (licensee's name) is unable to secure alternative financial assurance as specified in Subchapter I of 30 Texas Administrative Code Chapter 336 to replace this letter of credit within 30 days of notification of cancellation, the TNRCC Executive Director may draw upon any unused portion of the credit prior to cancellation.

The bank shall give immediate notice to the licensee and the TNRCC Executive Director of any notice received or action filed alleging the (1) insolvency or bankruptcy of the bank or (2) any violations of regulatory requirements that could result in suspension or revocation of the bank's charter or license to do business. It also should give immediate notice if it, for any reason, becomes unable to fulfill its obligation under the letter of credit.

Whenever this letter of credit is drawn on, under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of (licensee's name) in accordance with your instructions.

Each draft must bear upon its face the clause "Drawn under Letter of Credit No. \_\_\_\_\_, date \_\_\_\_\_, and the total of this draft and all other drafts previously drawn under this Letter of Credit does not exceed (fill in amount)."

We certify that the wording of this letter of credit is identical to the wording specified in 30 Texas Administrative Code §336.807(d) as such regulations were constituted on the date shown immediately below.  
(Signature(s) and title(s) of official(s) of issuing institution)  
(Date)

This credit is subject to (insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code").

(e) Certificate of insurance for closure.

CERTIFICATE OF INSURANCE FOR CLOSURE

Name and Address of Insurer (herein called the "Insurer"):

\_\_\_\_\_  
Name and Address of Insured (herein called the "Insured"):

\_\_\_\_\_  
Facilities and/or Sites covered: (list for each facility or site: the TNRCC license number, name, address, and the amount of insurance for closure activities and, if applicable, long-term care (these amounts for all facilities and/or sites covered must total the face amount shown below).)

Face Amount: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Effective Date: \_\_\_\_\_

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for closure activities and, if applicable, long-term care for the (insert facility(ies) and/or site(s)) identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 30 Texas Administrative Code, Chapter 336, as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the Executive Director of the Texas Natural Resource Conservation Commission (TNRCC), the Insurer agrees to furnish to the TNRCC Executive Director a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 30 Texas Administrative Code §336.807(e) as such regulations were constituted on the date shown immediately below.  
(Authorized signature for Insurer)

(Name of person signing)

(Title of person signing)

Signature of witness or notary:

\_\_\_\_\_  
(Date)

(f) Letter from chief financial officer.

(1) Parent company.

#### LETTER FROM CHIEF FINANCIAL OFFICER

(Address to the Executive Director of the Texas Natural Resource Conservation Commission (TNRCC))

I am the chief financial officer of (firm's name and address). This letter is in support of this firm's use of the financial test to demonstrate financial responsibility for closure activities and, if applicable, long-term care as specified in Subchapter I of 30 Texas Administrative Code Chapter 336.

(Fill out the following five paragraphs regarding facilities and/or sites and associated current cost estimates. If your firm has no facilities and/or sites that belong in a particular paragraph, write "NONE" in the space indicated. For each facility or site, include its TNRCC License or Permit Number, name, address and current cost estimates. Identify each cost estimate as to whether it is for closure, post-closure, plugging and abandonment, or long-term care.)

1. The firm identified above is the parent company of the following sites for which financial assurance is being demonstrated through the financial test. The current cost estimates covered by the test are shown for each site: \_\_\_\_\_.
2. The firm identified above guarantees, through the guarantee specified in Subchapter I of 30 TAC Chapter 336, closure at each of the following sites: \_\_\_\_\_.
3. In states where TNRCC is not administering the financial assurance requirements of Subchapter I of 30 TAC Chapter 336, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure and, if applicable, long-term care of the following facilities and/or sites through the use of a test equivalent or substantially equivalent to the financial test specified in Subchapter I of 30 TAC Chapter 336. The current cost estimate covered by such a test are shown for each facility or site: \_\_\_\_\_.
4. This firm is the owner or operator or guarantor of the following hazardous waste management facilities for which financial assurance for closure, post-closure care, corrective action, and/or liability coverage is demonstrated either to EPA, TNRCC or a State through the financial test specified in subpart H of 40 CFR parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure cost estimate, post-closure cost estimate, corrective action, and/or liability covered by such financial assurance are shown for each facility: \_\_\_\_\_.
5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is demonstrated either to EPA, TNRCC or a State through the financial test specified in 40 CFR part 144 or 30 TAC Chapter 331 or equivalent or substantially equivalent State mechanisms. The current closure cost estimates covered by such financial assurance are shown for each facility: \_\_\_\_\_. I further attest that the licensee for which this guarantee is being made has a positive tangible net worth.

This firm (insert "is required" or "is not required") to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on (month, day). I certify that the figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements and footnotes for the latest completed fiscal year, ended (date).

(Fill in either Alternative I if the criteria of §336.804(f)(2) are used or Alternative II if the criteria of §336.804(f)(3) are used.)

#### ALTERNATIVE I

1. Sum of current cost estimates (total of all cost estimates shown in the five paragraphs above) \$ \_\_\_\_\_
- \*2. Total liabilities (if any portion of current cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4) \$ \_\_\_\_\_
- \*3. Tangible net worth \$ \_\_\_\_\_
- \*4. Net Worth \$ \_\_\_\_\_
- \*5. Current assets \$ \_\_\_\_\_
- \*6. Current liabilities \$ \_\_\_\_\_
- \*7. Net working capital (line 5 minus line 6) \$ \_\_\_\_\_
- \*8. The sum of net income plus depreciation, depletion and amortization \$ \_\_\_\_\_
- \*9. Total assets in U. S. (required only if less than 90% of firm's assets are located in the U.S.) \$ \_\_\_\_\_

Circle either "yes" or "no" to the following questions.

10. Is line 3 at least \$10 million? yes/no
11. Is line 3 at least 6 times line 1? yes/no
12. Is line 7 at least 6 times line 1? yes/no
- \*13. Are at least 90% of firm's assets located in the U.S.? yes/no  
If not, complete line 14
14. Is line 9 at least 6 times line 1? yes/no
15. Is line 2 divided by line 4 less than 2.0? yes/no
16. Is line 8 divided by line 2 greater than 0.1? yes/no
17. Is line 5 divided by line 6 greater than 1.5? yes/no

\* Denotes figures were derived from audited financial statements.

#### ALTERNATIVE II

1. Sum of current cost estimates (total of all cost estimates shown in the five paragraphs above) \$ \_\_\_\_\_
2. Current bond rating of most recent issuance of this firm and name of rating service \_\_\_\_\_  
\_\_\_\_\_
3. Date of issuance of bond \_\_\_\_\_
4. Date of maturity of bond \_\_\_\_\_
- \*5. Tangible net worth (if any portion of the current cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line). \$ \_\_\_\_\_
- \*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) \$ \_\_\_\_\_

Circle either "yes" or "no" to the following questions.

7. Is line 5 at least \$10 million? yes/no
8. Is line 5 at least 6 times line 1? yes/no
- \*9. Are at least 90% of the firm's assets located in the U.S.? yes/no  
If not, complete line 10.
10. Is line 6 at least 6 times line 1? yes/no



\*Denotes figures derived from audited financial statements.

I hereby certify that the wording of this letter is identical to the wording specified in 30 Texas Administrative Code §336.807(f)(1) as such regulations were constituted on the date shown immediately below.

(Signature)

(Name)

(Title)

(Date)

(2) Owner or operator.

LETTER FROM CHIEF FINANCIAL OFFICER

(Address to the Executive Director of the Texas Natural Resource Conservation Commission (TNRCC))

I am the chief financial officer of (firm's name and address). This letter is in support of this firm's use of the financial test to demonstrate financial responsibility for closure activities and, if applicable, long-term care as specified in Subchapter I of 30 Texas Administrative Code Chapter 336.

(Fill out the following four paragraphs regarding facilities and/or sites and associated current cost estimates. If your firm has no facilities and/or sites that belong in a particular paragraph, write "NONE" in the space indicated. For each facility or site, include its TNRCC License or Permit Number, name, address and current cost estimates. Identify each cost estimate as to whether it is for closure, post-closure, plugging and abandonment, or long-term care.)

1. The firm identified above is the owner or operator of the following sites for which financial assurance is being demonstrated through the financial test. The current cost estimates covered by the test are shown for each site: \_\_\_\_\_.
2. In states where TNRCC is not administering the financial assurance requirements of Subchapter I of 30 TAC Chapter 336, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure and, if applicable, long-term care of the following facilities and/or sites through the use of a test equivalent or substantially equivalent to the financial test specified in Subchapter I of 30 TAC Chapter 336. The current cost estimate covered by such a test are shown for each facility or site: \_\_\_\_\_.
3. This firm is the owner or operator or guarantor of the following hazardous waste management facilities for which financial assurance for closure, post-closure care, corrective action, and/or liability coverage is demonstrated either to EPA, TNRCC or a State through the financial test specified in subpart H of 40 CFR parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure cost estimate, post-closure cost estimate, corrective action, and/or liability covered by such financial assurance are shown for each facility: \_\_\_\_\_.
4. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is demonstrated either to EPA, TNRCC or a State through the financial test specified in 40 CFR part 144 or 30 TAC Chapter 331 or equivalent or substantially equivalent State mechanisms. The current closure cost estimates covered by such financial assurance are shown for each facility: \_\_\_\_\_.

This firm is required to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on (month, day). I certify that the figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements and footnotes for the latest completed fiscal year, ended (date).

1. Sum of current cost estimates (or the current amount required if certification is used) (total of all cost estimates shown in the four paragraphs above) \$ \_\_\_\_\_
2. Current bond rating of most recent issuance of this firm and name of rating service \_\_\_\_\_
3. Date of issuance of bond \_\_\_\_\_
4. Date of maturity of bond \_\_\_\_\_
- \*5. Tangible net worth (if any portion of the current cost estimates is

- included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line). \$ \_\_\_\_\_
- \*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) \$ \_\_\_\_\_

Circle either "yes" or "no" to the following questions.

7. Is line 2 at least an "A" rating? yes/no
8. Is line 5 at least 10 times line 1? yes/no
- \*9. Are at least 90% of the firm's assets located in the U.S.? yes/no  
If not, complete line 10.
10. Is line 6 at least 10 times line 1? yes/no
11. Does company have at least one class of equity securities registered under the security Exchange Act of 1934? yes/no

\*Denotes figures derived from audited financial statements.

I hereby certify that the wording of this letter is identical to the wording specified in 30 Texas Administrative Code §336.807(f)(2) as such regulations were constituted on the date shown immediately below.

(Signature)

(Name)

(Title)

(Date)

(g) Corporate guarantee.

#### CORPORATE GUARANTEE

Guarantee made this (date) by (name of guaranteeing entity), a (insert "individual," "joint venture," "partnership," or "corporation") organized under the laws of the State of (insert name of State), herein referred to as guarantor, to the Texas Natural Resource Conservation Commission, hereinafter called TNRCC, obligee, on behalf of our subsidiary (licensee) of (business address).

#### Recitals

1. Guarantor has full authority and capacity to enter into this guarantee under its bylaws, articles of incorporation, and the laws of the State of (insert guarantor's state of incorporation), its State of Incorporation. (Guarantor should indicate which financial test is being used.)
2. This guarantee is being issued to comply with regulations issued by the Texas Natural Resource Conservation Commission (TNRCC), an agency of the State of Texas, pursuant to Chapter 401 of the Texas Health and Safety Code. TNRCC has promulgated regulations in Chapter 336 of Title 30 of the Texas Administrative Code. These regulations require that a licensee of (insert type of site) shall provide assurance that funds will be available when needed in accordance with the approved closure plan.
3. Guarantor meets or exceeds the following financial test criteria (insert statement indicating which financial test is being used) and agrees to comply with all reporting requirements for guarantors as specified in Subchapter I of 30 Texas Administrative Code Chapter 336:  
Guarantee shall meet one of the following two financial tests:
  - (a) Financial test one.
    - (i) Guarantor's tangible net worth and net working capital are each equal to or greater than six times the amount of the TNRCC approved current cost estimates required by the license; and
    - (ii) Guarantor's assets located in the United States amount to at least 90 percent of its total assets or at least six times the amount of the TNRCC approved current cost estimates required by the license; and
    - (iii) Guarantor meets two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
    - (iv) Guarantor's tangible net worth is at least \$10 million dollars.
  - OR
  - (b) Financial test two.
    - (i) The guarantor's most recently issued senior credit obligations are rated "BBB" or higher by Standard and Poor's Corporation, or "Baa" or higher by Moody's Investors Service, Inc.; and
    - (ii) The guarantor's tangible net worth is at least \$10 million and is equal to and greater than six times the amount of the TNRCC approved current cost estimates required by the license; and
    - (iii) The guarantor's assets located in the United States amount to at least 90 percent of its total assets or at least six times the amount of the TNRCC approved current cost estimates required by the license;
4. Guarantor owns 51 percent or more of the voting stock of the following licensee(s) covered by this guarantee. List for each licensee: (Name, address, the sites owned or operated by each licensee, and

- the corresponding TNRCC license numbers.) Guarantor also certifies that the licensee(s) for which this guarantee is being made has (have) a positive tangible net worth.
5. "Closure Plans" refers to the plans maintained as required by 30 Texas Administrative Code Chapter 336, for the closure activities of the sites identified above.
  6. For value received from (licensee), and pursuant to the authority conferred upon the guarantor by (insert either "the unanimous resolution of its directors" or "the majority vote of its shareholders"), a certified copy of which is attached, guarantor guarantees to TNRCC that in the event the licensee fails to perform the activities required in the TNRCC approved Closure Plan as required by License No. (insert numbers), the guarantor shall:
    - a. Carry out the required activities, or
    - b. Set up a trust fund in favor of the TNRCC in the amount of these TNRCC approved current cost estimates for these activities.
  7. Guarantor agrees to submit updated financial statements, financial test data, and a special auditor's report and reconciling schedule annually, within 90 days of the close of the parent company guarantor's fiscal year-end.
  8. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 60 days, by certified mail, notice to the TNRCC Executive Director and to (licensee) that it intends to provide alternate financial assurance, as specified in Subchapter I of 30 Texas Administrative Code Chapter 336, in the name of the (licensee). Within 90 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless (licensee) has done so.
  9. Guarantor agrees to notify the TNRCC promptly if the ownership of the licensee or the parent firm is transferred and to maintain this guarantee until the new parent firm or the licensee provides alternate financial assurance, as specified in Subchapter I of 30 Texas Administrative Code Chapter 336, acceptable to the TNRCC Executive Director.
  10. Guarantor agrees to notify the TNRCC Executive Director, by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within 10 days after commencement of the proceeding.
  11. Guarantor agrees that within 30 days after being notified by the TNRCC Executive Director of a determination that guarantor no longer meets the financial test criteria or that it is disallowed from continuing as a guarantor for the site under license number (insert TNRCC license number), it shall establish alternate financial assurance, as specified in Subchapter I of 30 Texas Administrative Code Chapter 336, in the name of (licensee) unless (licensee) has done so.
  12. Guarantor as well as its successors and assigns agrees to remain bound jointly and severally under this guarantee notwithstanding any or all of the following: amendment or modification of the license or approved Closure Plan for that site, the extension or reduction of the time of performance of closure, or any other modification or alteration of an obligation of the licensee pursuant to 30 Texas Administrative Code Chapter 336.
  13. Guarantor agrees to remain bound under this guarantee for so long as (licensee) must comply with the applicable financial assurance requirements of Subchapter I of 30 Texas Administrative Code Chapter 336, for the above listed sites, except that guarantor may cancel this guarantee by sending notice by certified mail to the TNRCC Executive Director and to (licensee), such cancellation to become effective no earlier than 90 days after receipt of such notice by both TNRCC Executive Director and (licensee), as evidenced by the return receipts.
  14. Guarantor agrees that if (licensee) fails to provide alternate financial assurance as specified in Subchapter I of 30 Texas Administrative Code Chapter 336 as applicable, and to obtain written

approval of such assurance from the TNRCC Executive Director within 30 days after a notice of cancellation by the guarantor is received by the TNRCC Executive Director from guarantor, guarantor shall provide such alternate financial assurance in the name of the (licensee) or make full payment under the guarantee. The guarantor and the licensee agree to be jointly and severally liable for all litigation costs incurred by the TNRCC in any successful effort to enforce the agreement against the guarantor.

15. Guarantor expressly waives notice of acceptance of this guarantee by the Texas Natural Resource Conservation Commission or by (licensee). Guarantor also expressly waives notice of amendments or modifications of the Closure Plan and of amendments or modifications of the license.
16. If the guarantor files Financial Reports with the U.S. Securities and Exchange Commission, then it shall promptly submit them to the TNRCC during each year in which this guarantee is in effect.

I hereby certify that the wording of this guarantee is identical to the wording specified in 30 Texas Administrative Code §336.807(g) as such regulations were constituted on the date shown immediately below.

Effective date:\_\_\_\_\_.

(Name of guarantor)

(Authorized signatures for guarantor) (2)

(Name of persons signing) (2)

(Title of persons signing) (2)

(Name of licensee) (2)

(Authorized Signatures for licensee) (2)

(Names of persons signing) (2)

(Titles of persons signing) (2)

Signature of witness or notary:\_\_\_\_\_

(h) Letter from chief financial officer.

LETTER FROM CHIEF FINANCIAL OFFICER

(Address to the Executive Director of the Texas Natural Resource Conservation Commission (TNRCC))

I am the chief financial officer of (firm's name and address). This letter is in support of this firm's use of the financial test to demonstrate financial responsibility for closure activities and, if applicable, long-term care as specified in Subchapter I of 30 Texas Administrative Code Chapter 336.

(Fill out the following five paragraphs regarding facilities and/or sites and associated current cost estimates. If your firm has no facilities and/or sites that belong in a particular paragraph, write "NONE" in the space indicated. For each facility or site, include its TNRCC License or Permit Number, name, address and current cost estimates. Identify each cost estimate as to whether it is for closure, post-closure, plugging and abandonment, or long-term care.)

1. The firm identified above is the parent company of the following facilities for which financial assurance is being demonstrated through the financial test. The current cost estimates covered by the test are shown for each facility: \_\_\_\_\_.
2. The firm identified above guarantees, through the guarantee specified in Subchapter I of 30 TAC Chapter 336, closure at each of the following facilities: \_\_\_\_\_.
3. In states where TNRCC is not administering the financial assurance requirements of Subchapter I of 30 TAC Chapter 336, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure and, if applicable, long-term care of the following facilities and/or sites through the use of a test equivalent or substantially equivalent to the financial test specified in Subchapter I of 30 TAC Chapter 336. The current cost estimate covered by such a test are shown for each facility or site: \_\_\_\_\_.
4. This firm is the owner or operator or guarantor of the following hazardous waste management facilities for which financial assurance for closure, post-closure care, corrective action, and/or liability coverage is demonstrated either to TNRCC, EPA or a State through the financial test specified in subpart H of 40 CFR parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure cost estimate, post-closure cost estimate, corrective action, and/or liability covered by such financial assurance are shown for each facility: \_\_\_\_\_.
5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is demonstrated either to EPA, TNRCC or a State through the financial test specified in 40 CFR part 144 or 30 TAC Chapter 331 or equivalent or substantially equivalent State mechanisms. The current closure cost estimates covered by such financial assurance are shown for each facility: \_\_\_\_\_.

I further attest that the licensee for which this guarantee is being made has a positive tangible net worth.

This firm (insert "is required" or "is not required") to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on (month, day). I certify that the figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements and footnotes for the latest completed fiscal year, ended (date).

(Fill in either Alternative I if the criteria of §336.804(g)(2) are used or Alternative II if the criteria of §336.804(g)(3) are used.)

ALTERNATIVE I

1. Sum of current cost estimates (total of all cost estimates shown

- in the five paragraphs above) \$ \_\_\_\_\_
- \*2. Total liabilities (if any portions of the cost estimates are included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4) \$ \_\_\_\_\_
- \*3. Tangible net worth \$ \_\_\_\_\_
- \*4. Net Worth \$ \_\_\_\_\_
- \*5. Current assets \$ \_\_\_\_\_
- \*6. Current liabilities \$ \_\_\_\_\_
- \*7. Net working capital (line 5 minus line 6) \$ \_\_\_\_\_
- \*8. The sum of net income plus depreciation, depletion and amortization \$ \_\_\_\_\_
- \*9. Total assets in U. S. (required only if less than 90% of firm's are located in U.S.) \$ \_\_\_\_\_

Circle either "yes" or "no" to the following questions.

10. Is line 3 at least \$20 million? yes/no
11. Is line 3 at least 6 times line 1? yes/no
12. Is line 7 at least 6 times line 1? yes/no
- \*13. Are at least 90% of firm's assets located in the U.S.? yes/no  
If not, complete line 14
14. Is line 9 at least 6 times line 1? yes/no
15. Is line 2 divided by line 4 less than 2.0? yes/no
16. Is line 8 divided by line 2 greater than 0.1? yes/no
17. Is line 5 divided by line 6 greater than 1.5? yes/no

\*Denotes figures were derived from audited financial statements.

#### ALTERNATIVE II

1. Sum of current cost estimates (total of all cost estimates shown in the five paragraphs above) \$ \_\_\_\_\_
2. Current bond rating of most recent issuance of this firm and name of rating service \_\_\_\_\_
3. Date of issuance of bond \_\_\_\_\_
4. Date of maturity of bond \_\_\_\_\_
- \*5. Tangible net worth (if any portion of the cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line). \$ \_\_\_\_\_
- \*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) \$ \_\_\_\_\_

Circle either "yes" or "no" to the following questions.

7. Is line 5 at least \$20 million? yes/no
8. Is line 5 at least 6 times line 1? yes/no
- \*9. Are at least 90% of the firm's assets located in the U.S.? yes/no  
If not, complete line 10.
10. Is line 6 at least 6 times line 1? yes/no

\*Denotes figures derived from audited financial statements.



I hereby certify that the wording of this letter is identical to the wording specified in 30 Texas Administrative Code §336.807(h) as such regulations were constituted on the date shown immediately below.

(Signature)

(Name)

(Title)

(Date)

- (i) Corporate guarantee.

#### CORPORATE GUARANTEE

Guarantee made this (date) by (name of guaranteeing entity), a corporation organized under the laws of the State of (insert name of State), herein referred to as guarantor, to the Texas Natural Resource Conservation Commission, hereinafter called TNRCC, obligee, on behalf of our subsidiary (licensee) of (business address).

#### Recitals

1. Guarantor has full authority and capacity to enter into this guarantee under its bylaws, articles of incorporation, and the laws of the State of (insert guarantor's state of incorporation), its State of Incorporation. (Guarantor should include which financial test is being used.)
2. This guarantee is being issued to comply with regulations issued by the Texas Natural Resource Conservation Commission (TNRCC), an agency of the State of Texas, pursuant to Chapter 401 of the Texas Health and Safety Code. TNRCC has promulgated regulations in Chapter 336 of Title 30 of the Texas Administrative Code. These regulations require that a licensee of (insert type of facility) shall provide assurance that funds will be available when needed in accordance with the approved Closure Plan and, if applicable, for long term care of the facility.
3. Guarantor meets or exceeds the following financial test criteria (insert statement indicating which financial test is being used) and agrees to comply with all notification requirements for sureties as specified in Subchapter I of the 30 Texas Administrative Code Chapter 336:  
Guarantee shall meet one of the following two financial tests:
  - (a) Financial test one.
    - (i) Guarantor's tangible net worth and net working capital are each equal to or greater than six times the amount of the current cost estimates required by the license; and
    - (ii) Guarantor's assets located in the United States amount to at least 90 percent of its total assets or at least six times the amount of the TNRCC approved current cost estimates required by the license; and
    - (iii) Guarantor meets two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
    - (iv) Guarantor's tangible net worth is at least \$20 million dollars;
  - OR
  - (b) Financial test two.
    - (i) The guarantor's most recently issued senior credit obligations are rated "BBB" or higher by Standard and Poor's Corporation, or "Baa" or higher by Moody's Investors Service, Inc.; and
    - (ii) The guarantor's tangible net worth is at least \$20 million and is equal to or greater than six times the amount of the TNRCC approved current cost estimates required by the license; and
    - (iii) The guarantor's assets located in the United States amount to at least 90 percent of its total assets or at least six times the amount of the TNRCC approved current cost estimates required by the license.
4. Guarantor owns 51 percent or more of the voting stock of the following licensee(s) covered by this guarantee. List for each licensee: Name, address, the facilities owned or operated by each licensee, and the corresponding license numbers. Guarantor also certifies that the licensee(s) for which this guarantee is being made has (have) a positive tangible net worth.

5. "Closure Plans" refers to the plans maintained as required by 30 Texas Administrative Code Chapter 336, for the closure activities and, if applicable, long-term care of the facilities identified above.
6. For value received from (licensee) and pursuant to the authority conferred upon the guarantor by (insert either "the unanimous resolution of its directors" or "the majority vote of its shareholders"), a certified copy of which is attached, guarantor guarantees to TNRCC that in the event the licensee fails to perform the activities required in the TNRCC approved Closure Plan as required by License No. (insert numbers), the guarantor shall:
  - a. Carry out the required activities, or
  - b. Set up a trust fund in favor of the TNRCC in the amount of these TNRCC approved current cost estimates for these activities, and
  - c. In addition, the licensee or guarantor shall cover the payment of the amount for long term care, if applicable, as required by 30 Texas Administrative Code Chapter 336.
7. Guarantor agrees to submit revised financial statements, financial test data, and a special auditor's report and reconciling schedule annually, within 90 days of the close of the parent company guarantor's fiscal year.
8. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 60 days, by certified mail, notice to the TNRCC Executive Director and to (licensee) that it intends to provide alternate financial assurance as specified in Subchapter I of 30 Texas Administrative Code Chapter 336, in the name of the (licensee). Within 90 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless (licensee) has done so.
9. The guarantor also agrees to notify the TNRCC promptly if the ownership of the licensee or the parent firm is transferred and to maintain this guarantee until the new parent firm or the licensee provides alternate financial assurance, as specified in Subchapter I of 30 Texas Administrative Code Chapter 336, acceptable to the TNRCC Executive Director.
10. The guarantor agrees to notify the TNRCC Executive Director, by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within 10 days after commencement of the proceeding.
11. Guarantor agrees that within 30 days after being notified by the TNRCC Executive Director of a determination that guarantor no longer meets the financial test criteria or that it is disallowed from continuing as a guarantor for the facility under license number (insert license number), it shall establish alternate financial assurance, as specified in Subchapter I of 30 Texas Administrative Code Chapter 336, in the name of (licensee), unless (licensee) has done so.
12. Guarantor as well as its successors and assigns agrees to remain bound jointly and severally under this guarantee notwithstanding any or all of the following: amendment or modification of the license or Closure Plan for that facility, the extension or reduction of the time of performance of closure or any other modification or alteration of an obligation of the licensee pursuant to 30 Texas Administrative Code Chapter 336.
13. Guarantor agrees to remain bound under this guarantee for so long as (licensee) must comply with the applicable financial assurance requirements of Subchapter I of 30 Texas Administrative Code Chapter 336, for the above listed facilities, except that guarantor may cancel this guarantee by sending notice by certified mail to the TNRCC Executive Director and to (licensee), such cancellation to become effective no earlier than 90 days after receipt of such notice by both TNRCC Executive Director and (licensee), as evidenced by the return receipts.
14. Guarantor agrees that if (licensee) fails to provide alternate financial assurance as specified in Subchapter I of 30 Texas Administrative Code Chapter 336 as applicable, and to obtain written

approval of such assurance from the TNRCC Executive Director within 60 days after a notice of cancellation by the guarantor is received by the TNRCC Executive Director from guarantor, guarantor shall provide such alternate financial assurance in the name of (licensee) or make full payment under the guarantee. The guarantor and the licensee agree to be jointly and severally liable for all litigation costs incurred by the TNRCC in any successful effort to enforce the agreement against the guarantor.

15. Guarantor expressly waives notice of acceptance of this guarantee by the Texas Natural Resource Conservation Commission or by (licensee). Guarantor also expressly waives notice of amendments or modifications of the Closure Plan and of amendments or modifications of the license.
16. If the guarantor files Financial Reports with the U.S. Securities and Exchange Commission, then it shall promptly submit them to the TNRCC during each year in which this guarantee is in effect.

I hereby certify that the wording of this guarantee is identical to the wording specified in 30 Texas Administrative Code §336.807(i) as such regulations were constituted on the date shown immediately below.

Effective date:\_\_\_\_\_.

(Name of guarantor)

(Authorized signatures for guarantor) (2)

(Name of persons signing) (2)

(Title of persons signing) (2)

(Name of licensee) (2)

(Authorized Signatures for licensee) (2)

(Names of persons signing) (2)

(Titles of persons signing) (2)

Signature of witness or notary:\_\_\_\_\_

Adopted May 14, 1997

Effective June 5, 1997